INTER-DIOCESAN AND INTER-PROVINCIAL COMMUNICATION BEFORE AND AFTER THE REFORMATION

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Before the Reformation, the judicial powers of the church, extending over all matrimonial and testamentary cases, were vested in the bishop, who delegated his functions normally to an official and occasionally to commissaries with either a general or a special commission. It was inevitable that judicial proceedings in one diocese could sometimes not be concluded without reference to another. It might be necessary to obtain the evidence of witnesses resident in another diocese, to cite a party resident there, to order executors resident in a second diocese to come for confirmation, or to require the execution in a second diocese of a sentence passed in the first. In all such cases use was made of the supplication *vicissitudinis causa*, which could be sent either in the name of the bishop or in that of his official or commissary, and directed to either the bishop or the official or the commissary in the other diocese. The style of the supplication, while not invariable, always conformed closely to a single type and contained certain conventional phrases. After the salutation and the narrative describing the events (usually a process) which had made the supplication necessary, the request was introduced by the words *in juris subsidium et vicissitudinis causa requirimus* or some other phrase containing the expression *vicissitudinis causa* or *vicissitudinis gratia*. The request concluded with the phrase *prout nos in similibus seu hiis majoribus onerare volueritis* or some such form of words emphasising the reciprocal nature of the relationship between the suppliant and the person addressed. The style plainly demonstrated that the supplication was a communication between equals who accorded each other mutual recognition.

Half a dozen styles of such supplications are preserved in John Lauder's *Formulare*, an ecclesiastical style book of the first half of the sixteenth century. In two of them, the archbishop of St. Andrews, who sends the supplication, explains to the bishop of another diocese that in a case of divorce in the archbishop's court one of the parties requires evidence from witnesses resident in the other diocese, he sends to the bishop certain articles and requests him to examine the witnesses thereon and transmit their answers. In a third instance, the commissary of the bishop of

Dunkeld informs the archbishop of St. Andrews that in an executry case the pursuers, who belong to the diocese of St. Andrews, require evidence from witnesses in that diocese and, as these witnesses are too aged and infirm to be brought to court, asks the archbishop to make arrangements for their examination. In a fourth instance, the archbishop explains that in a case for the payment of a certain sum of money he has had occasion to excommunicate two persons resident in another bishop's diocese, but without effect, since they have, like Pharaoh, hardened their hearts in contempt of the keys of Holy Church; and the archbishop therefore requests the other bishop to denounce these persons. In a fifth supplication, the archbishop relates that a vicar in his diocese has appointed as his executors two persons resident in another diocese and requests the bishop of that diocese to forbid them to intromit with the vicar's estate until his testament has been confirmed and the quot—the fee for confirmation—duly paid.[1]

Apart from the styles preserved in the *St. Andrews Formulare*, examples are rare of what must have been from its nature a somewhat fugitive writ. A specimen among the Morton Papers in the Register House furnishes an illustration of the procedure. In a suit before the official principal of St. Andrews in 1543 between Robert Douglas of Lochleven and Euphemia Wemyss, Mr. Andrew Trale, Euphemia's procurator, alleged that witnesses resident in the diocese of Dunblane were necessary. The official therefore supplicated the commissary general of Dunblane to cite these witnesses and examine them on certain articles enclosed with the supplication. The commissary was to send their depositions to the official and at the same time return the writs sent to him.[2]

The procedure was not restricted to one province of the church, but was inter-provincial or 'international.' Thus, turning to the *Formulare* again, we find Archbishop Forman of St. Andrews writing to the bishop of Durham. He related that W. R., a notorious Border reiver and disturber of the peace of both kingdoms, had been excommunicated in Scotland on account of his unspeakable misdeeds, but that after he had received a fatal wound his accomplices had caused him to be buried, with due solemnity, near the high altar of a church in Tynedale, in the diocese of Durham, as if he had been a faithful Christian. As this was contrary to canon law and a fearful example to other offenders, supplication is made to the bishop of Durham that the body be exhumed from its resting-place and buried *in loco vili et prophano*.[3] Less picturesque, and probably less unusual, circumstances lay behind another 'international' example—a

[1] *St. Andrews Formulare* (Stair Soc.), i, 257-62.
[2] Morton Papers, 12 July, 1543. See also 3 July, 1542.
[3] *St. Andrews Formulare*, i, 257-8.

supplication addressed by Bishop James Chisholm of Dunblane to the bishop of Roskilde, in Denmark, in the early years of the sixteenth century. Katharine Scrymgeour, wife of Robert Sinclair, merchant, had squandered part of her husband's property and carried off more of it when she deserted him and fled to Denmark. The Scottish bishop writes to his Danish brother, making observations on the deceits of women and remarking that it is no unworthy task to succour defrauded husbands, and requests him, *vicissitudinis jure*, to cause the 'wicked woman,' Katharine, to be brought to judgment and compelled to adhere to her husband or to proceed by some other means to restitution of his goods.[1]

The Reformation brought temporary confusion to the ecclesiastical courts in Scotland. An act of parliament of August 1560, which abrogated papal authority in Scotland, laid down that 'no bishop nor other prelate of this realm use any jurisdiction in time to come by the said bishop of Rome's authority.' Quite apart from the constitutional question of the validity of this legislation, it was not at all clear whether the terms of the statute denuded the bishops of their consistorial jurisdiction, and there are several documents demonstrating that in practice they continued to exercise it, at least intermittently.[2] It is also true that throughout the country the bishops' deputies, the commissaries, remained in office.[3] But the reformers, too, had their candidates for the consistorial jurisdiction, at congregational level in the kirk session (which might term itself a consistorial court)[4] and at diocesan or regional level in the court of the superintendent (consisting of the kirk session of a chief town in his diocese). The kirk session of St. Andrews began to act in divorce suits in February 1559-60,[5] and in the following August the archbishop of St. Andrews remarked to his brother of Glasgow: 'The elders of every town take all the causes of our ecclesiastical jurisdiction and intromit with our office.'[6] Presently we find the Lords of Council themselves requesting the kirk session of St. Andrews to give sentence of divorce,[7] and expressly granting authority to the superintendent of Lothian to decide on divorce suits.[8] There was, however, a third competitor for the ecclesiastical jurisdiction, in addition to the bishops and the courts of the reformed church—namely, the Court of Session. From 1560 consistorial cases were from time to time brought before the Lords, either because the facilities offered by bishops,

[1] Nat. Lib. Scot., MS. 35.5.9 (B), 89.
[2] See 'The Church Courts' in the forthcoming *History of Scots Law* (Stair Soc.).
[3] *Ibid.*
[4] *Reg. of the Kirk Session of St. Andrews*, i, 42.
[5] *Ibid.*, 18-27.
[6] Keith, *History*, iii, 5.
[7] *Reg. of the Kirk Session of St. Angrews*, i, 50-51.
[8] Warrender Papers (Reg. Ho.), vol. A, fo. 98.

superintendents and kirk sessions were inadequate—which is likely enough —or because there was some dubiety about the legality of proceedings before ecclesiastical courts. The first step towards ending this confusion which had followed the Reformation was the erection, in 1564, of the commissary court of Edinburgh, which was given a general jurisdiction, throughout the whole realm, in various causes, including divorce. Confusion was not thereby ended, but continued for another two decades or more ; yet from that point the wings of the reformed church were clipped. For two or three years after 1560 there had been a strong tendency for the superintendent's consistory to inherit the jurisdiction of the old episcopal courts ; but from 1564 that tendency was checked and the church lost a very large part of its ancient jurisdiction, until it was restored to the bishops in 1609.

We have, then, this brief but intensely interesting period immediately after the reformation, when such parts of the old consistorial jurisdiction as remained in the hands of the reformed church were exercised at ' diocesan ' level by the superintendent and his court and at congregational level by the kirk session. The old needs of communication between one unit and another remained, and the *Register of the Kirk Session of St. Andrews* (which incorporates the proceedings of the court of the superintendent of Fife) preserves some of the styles used. Already on 11 March 1559/60 the kirk session of St. Andrews requests the kirk sessions of Anstruther and Falkland to cite witnesses to compear in an action for divorce pending at St. Andrews. The phraseology is modelled on that of the traditional supplication *vicissitudinis causa* : ' requiring you . . . as perchance it shall happen you in the like case [to] require us . . . that ye summon, warn and charge [*certain named persons*] to compear before us . . . to bear leal and soothfast [witness] in an action and cause of divorce . . . ; certifying them, if they compear not . . . we will use all compulsion against them . . . that is, cursing and excommunication. And this ye do, as ye shall in like manner require us in time coming, if it shall happen you to have the like cause before you . . .'[1] The word *vicissitudo* is not used, but the style is there. That was one kirk session to another, before the erection of the superintendent's court. When the latter did emerge, and had occasion to write to a kirk session, it did not use the *supplicatio*, because it was issuing an instruction to an inferior and not making a request to an equal.[2] Likewise when the kirk session of St. Andrews had to ask the magistrates to take action against an offender, a supplication was sent, but again in this case the style of the *vicissitudo*, which indicated a reciprocal relationship between equals, was not used.[3]

[1] *Reg. Kirk Session St. Andrews*, i, 22-3.
[2] *Ibid.*, 107-8, *cf.* 240. [3] *Ibid.*, 36, 143, 195.

The Scottish reformed Church recognised as its sisters all those churches which had renounced the Roman supremacy, and it had no doubts about the propriety of relations between them as close as those which had joined one national church to another when all western Europe acknowledged the papal power. In March 1559/60 the kirk session of St. Andrews received from one David Goodlad a petition which stated that Margaret Archibald, his spouse, had deserted him as long ago as 1524 and was now in Denmark, where she had bigamously married one Hans Boukle or Buckijliis. David, the petitioner, had showed remarkable patience, but now, after being a grass widower for thirty-six years, was desirous to marry again and had procured the consent of ' ane chaste virgyne past xl yeris of aige.' He therefore sought a divorce from Margaret. The kirk session drew up an edict (in Latin and in the usual pre-Reformation form), summoning the woman to compear within eighty days. A copy was affixed to the door of the parish church of St. Andrews and another was transmitted to the ' minister ' of Lund, in Denmark, from whom an acknowledgment was received in August. (His reply, in Danish, was translated by William Christison, minister of Dundee.) In November the kirk session gave its decision that adultery was proved, and sentence of divorce was pronounced, leaving David free to marry again.[1] This case has a bearing on the more important one which was to follow a few years later.

On 29 December 1563 the general assembly received a petition from John Baron, minister of Galston. Baron had probably been in England in Edward VI's reign, he had associated with the English exiles on the continent during Mary's reign and he had married an Englishwoman, Anne Goodacre. His petition stated that his wife, whom he had left at his house in Edinburgh during his absence at Galston, had ' of her own wickedness and evil counsel ' gone off to England in June last without his permission and in spite of appeals from him and his brethren that she should remain in Edinburgh until his return. The petition did not request any particular action, but merely ' advice and counsel and direction by what means he might be at liberty from the foresaid wicked woman,' whose departure had been ' to his great grief and heart's sorrow.' The assembly ordained letters to be directed in their name by the superintendent of Lothian and the ministers of Edinburgh to the archbishops of Canterbury and York ' requesting them, *vicissitudinis causa*, that they should cause edicts to be proclaimed . . . or personal citation to be executed ' ordering the woman to compear before the court of the superintendent of Lothian within sixty days after summons.[2] On 10 February

[1] *Reg. Kirk Session St. Andrews*, i, 44-50.

[2] State Papers, Scotland, Elizabeth (Public Record Office), vol. viii, No. 78 (*Cal. S. P. Scot.*, ii, No. 44).

1563/4 a letter was accordingly written by the superintendent of Lothian and the ministers of Edinburgh (that is, John Spottiswoode, John Knox and John Craig) to the English archbishops. It narrated Baron's petition and the ordinance of the assembly (a certified extract of which was enclosed), and proceeded : ' We therefore, in the name of the Eternal God, of his son Jesus Christ, and as ye desire sin to be punished and us your fellow servants in Christ Jesus to serve you or any of you in the like case, most humbly require you to cause your edicts to be published in all such places as you know them to be expedient, charging the said Ann to compear before the session of Edinburgh in the accustomed place of their assembly the 25th day of May next to come to answer by her self and not by her procurator to such crimes as shall be laid to her charge by her said husband and by us for the rebellious departing and other crimes that may be suspected to have ensued thereupon, with certification to her that if she compear not the said day and place we will proceed and minister justice at the said John's instance according to God's word. Further we . . . desire you to remit to us . . . this our act . . . together with your edicts or summonses duly executed and endorsed in authentic form ; which doing . . . shall you bind us to the like or greater service whensoever it shall please you or any pastor within that realm to charge any of us.' A note was appended to the effect that the ' wicked and rebellious woman ' remained for a season at York.[1]

Matthew Parker, archbishop of Canterbury, recognised the communication as a supplication *vicissitudinis causa*, but considered that it touched ' the state and order of the realm.' Being a dutiful Elizabethan prelate, he therefore decided to consult the civil authority, and he put the case before Sir William Cecil, the Secretary, in a letter dated 14 April 1564. Parker made the following observations : (1) ' This *vicissitudo* is used at the request of them which agnise [*i.e.*, recognise] one superior governor as subjects of one realm.' Here the archbishop's law was wrong by pre-Reformation standards, for the *vicissitudo* had operated between dioceses and provinces without regard to political frontiers. Yet, as his later remarks will show, he realised more clearly than his Scottish correspondents that the old international organisation had been superseded, and he was fully conscious not only of the limits of each national church but of his own dependence on the national ' supreme governor.' (2) ' It is used where the abode or continuance of the party to be called is certainly known, in whose territory the party continueth.' The preliminary detective work, he felt, should be done by the Scots, and the supplication

[1] State Papers, Scotland, Elizabeth (Public Record Office), vol. ix, No. 9 (copy) The original is in Corpus Christi College (MS. cxiv, No. 209). Cf. *Cal. S. P. Scot.* ii, No. 54.

directed to the bishop of the diocese where the party was resident. (3) ' Doubtful it is to me by what authority these requesters do exercise their conference, for they make no mention of their warrant or commission.' The English Erastian, who a few years before had written ' God keep us from such a visitation as Knox hath attempted in Scotland, the people to be orderers of things,'[1] may have felt some uneasiness about dealing with a church which did not enjoy the support of the civil power. (4) ' I take it that the party is not bound to obey any such command of the archbishops in England to appear in Scotland ' ; but clearly whether the summons should be enforced or not lay with the English authorities, and the supplication had made it clear that in the event of the woman's non-compearance decree would be given in her husband's favour. (5) ' Some doubt may rise whether they go about to practise a precedent by our assents to divorce the parties and licence the innocent to marry again.' As the Goodlad case had shown, this ' doubt ' was well founded, and Parker could hardly give his consent to proceedings which might lead to divorce and re-marriage. (6) The archbishop invoked the Act of Supremacy on which his church took its stand : ' It may be considered how it may be taken at the queen's majesty's hands for us to command any resident within her realm to appear before any foreign power out of her realm.' Compliance with the general assembly's request might infringe the law that no foreign prince, person, prelate, state or potentate should enjoy any power, jurisdiction, superiority, authority, pre-eminence or privilege within the realm of England. (7) He hinted at the possibility that compliance would establish a precedent to which ' extreme princes or evil prelates ' might appeal for the extradition of fugitives when they desired to ' torment the godly.'

After stating these objections, the archbishop concluded with a constructive proposal : ' If they require justice, it might as well here as there be ministered of us by the queen's laws ' ; that is, apparently, Baron might raise an action against his spouse in an English court. Parker offered to waive his objections if Cecil thought compliance with the Scottish request to be ' convenient in respect of gratification of such neighbourhood as is now betwixt Scotland and England,' and explained that he would await the Secretary's observations before sending an answer to Scotland.[2] No reply, either by Cecil to Parker or by Parker to the

[1] State Papers, Domestic, Elizabeth, vol. vii, No. 32, 6 November, 1559 (a date long anterior to the official recognition accorded to the Scottish reformers by the ' Reformation Parliament').

[2] *Ibid.*, vol. xxxiii, No. 56 (copy). Original in Corpus Christi College. The papers are printed in *Parker Correspondence* (Parker Society), 205 *et seq.* Cf. Strype, *Parker*, i, 297-8.

Scots, appears to have survived, but the absence of any reference to further developments on the whole suggests that the archbishop's views were allowed to prevail. If so, this incident may be regarded as marking an important stage in the disruption of ecclesiastical unity.

Three minor points of interest emerge from this case: (1) These proceedings of the assembly are not recorded in any extant compilation of assembly acts. (2) While the general assembly styles itself as such, yet John Baron, in his petition, addresses it as ' the maist honorable privie counsell there assembled with the rest of the nobilitie, the superintendents, ministers, commissioners of provinces and kirks '—a reminder that the assembly in its early days was of somewhat different composition from that familiar in later times. (3) The English archbishops were addressed by the Scots as those ' whom God of His providence and mercy hath erected as principals in ecclesiastical jurisdiction within the realm of England,' a phrase which demonstrates how much more charitable were the views of the reformers than those of the presbyterians who came after them: because in twenty years' time a Scottish archbishop was censured for giving the English bishops the right hand of fellowship, and by the end of the century ' Anglican ' was equated with ' anti-Christian.'

In 1565 we find a faint echo of the terminology of the *vicissitudo*, when three superintendents of the Scottish church, with John Knox, issued a testimonial in favour of Mr. Robert Hamilton, afterwards minister of St. Andrews, and Robert Campbell of Kinyeancleuch. Writing in name of ' the faithful brethren within the realm of Scotland ' to ' the faithful professors of the Lord Jesus in England, France, Germany or elsewhere,' they concluded: ' Receive them, therefore, we beseech you, as the servants of God and as our dearest brethren. In doing whereof, as you shall please God, so shall you bind us to the like vicissitude upon the like assurance.'[1] This, however, was a document without legal or judicial significance.

The rapidity with which the supplication *vicissitudinis causa*, as an effective ' international ' instrument in legal proceedings, fell into desuetude, goes some way to justify Archbishop Parker's observations in 1564. In 1574 Jonet Car, an Edinburgh woman, pursued her husband for divorce before the commissaries of the bishop of Durham, instead of raising her action in a Scottish court which would have proceeded by way of supplication to the English diocese;[2] this, it would seem, was the course which Parker had suggested in the Baron-Goodacre case. By this

[1] Wodrow Society, *Miscellany*, i, 288; Knox, *Works*, vi, 429-30.

[2] Maitland Club, *Miscellany*, i, 103-4.

time, of course, the Scottish church courts had lost their jurisdiction in divorce suits, which were handled by the commissary courts. But the proceedings of the courts of the Scottish reformed church in cases of desertion,[1] and their pursuit of delinquents liable to 'discipline,' often involved communication between bishops—and, later, presbyteries and synods—within Scotland itself;[2] but beyond two applications by the synod of Argyll, in 1657, one to 'the brethren in Ireland' and the other to 'the presbytery in Ireland,'[3] attempts to enlist the assistance of ecclesiastical judicatories furth of Scotland are not conspicuous. Further examination of presbytery records would be necessary before one could generalise, but it would seem that the traditional procedure was superseded. Instead, we find the presbytery of Inverness communicating directly with a delinquent who was fugitive in England,[4] and such a proceeding would seem to have been the inevitable resort after the ancient *vicissitudo* fell out of use.

[1] The place which decrees of adherence by church courts were to occupy in proceedings for divorce on the ground of desertion was defined in a statute of 1573 (*A.P.S.*, iii, 81-2). Provision was made for execution of a charge by a bishop to the minister of the parish where the defender remains, or the minister of the next adjacent parish, but nothing was said of defenders furth of Scotland.

[2] There are numerous instances in the *Minutes of the Synod of Argyll* and the *Presbytery Records of Inverness and Dingwall.*

[3] *Minutes of the Synod of Argyll*, ii, 151, 162.

[4] *Presbytery Records of Inverness and Dingwall*, xxxi-xxxii.